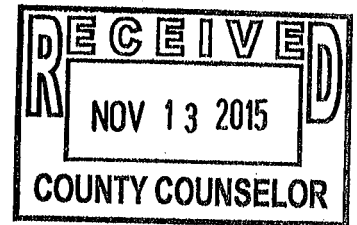


IN THE UNITED STATES FEDERAL DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

COPY

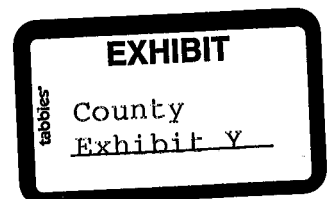
TRACEY WHITE, et al,)
Plaintiffs,)
vs.) No. 14-cv-01490-HEA
THOMAS JACKSON, et al,)
Defendants.)



DEPOSITION OF NICHOLAS PAYNE
TAKEN ON BEHALF OF THE PLAINTIFFS
ON OCTOBER 14, 2015

REPORTER: LINDA HANAGAN, MO-CCR 309, CSR No. 084-002846

RIVER BEND REPORTING
618-466-1123



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9 and

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16

17 ALSO PRESENT:

18 Mr. Dan Hill
19 Mr. Antonio Valentine

20

21 NICHOLAS PAYNE,

22 being first duly sworn to tell the truth, the whole
23 truth, and nothing but the truth, deposes and says on
24 behalf of the plaintiffs as follows:

25

26 DIRECT EXAMINATION

27 BY MR. SHABAZZ:

28 Q. State your full name for the record.

29 A. Nicholas Daniel Payne.

30 Q. Okay. And how are you employed, Mr. Payne?

31 A. I'm a police officer with the St. Louis County
32 Police Department.

1 Q. Okay. Is there any specific unit you're
2 assigned to?

3 A. I'm in the drug unit.

4 Q. Okay, the drug unit. How long have you served
5 in that unit?

6 A. Close to five years.

7 Q. Okay. How long have you been employed in that
8 department?

9 A. Roughly seven and a half years, sir.

10 Q. Before the drug unit, where did you serve?

11 A. I was on the -- in the first precinct of
12 St. Louis County Police Department.

13 Q. Okay. What did you do in the first precinct?

14 A. Patrol officer.

15 Q. Okay. My name is Malik Shabazz. I am the
16 president of Black Lawyers for Justice and I also
17 represent the plaintiffs in this lawsuit that has been
18 filed against you and other officers that are here
19 today.

20 This is a deposition. There's a court
21 reporter here who has placed you under oath, and
22 everything that we say here is part of the trial
23 proceedings in this case as part of the court record.

24 A. Yes, sir.

25 Q. Have you ever taken a deposition before?

1 A. I was terminated from a job, yes, sir.

2 Q. Okay. Which one?

3 A. Masonry Forte.

4 Q. What was the reason for that?

5 A. I never got a reason, to be honest with you.

6 Q. Okay.

7 A. I came into work one day, and my boss told me
8 to go home.

9 Q. Let me ask you this. Have you ever been
10 arrested?

11 A. No.

12 Q. Have any other -- has any disciplinary action
13 ever been filed against you by your department that
14 you currently work for?

15 A. Other than the complaints, no, sir.

16 Q. All right. Have you ever received any formal
17 training on crowd control?

18 A. Yes, sir.

19 Q. Okay. Could you explain that to me?

20 A. I think it was the last in-service we went to
21 before August 9th, the latter half of our in-service
22 class was CBRT trainer civil service response.

23 Q. What date was that?

24 A. I don't remember the exact date.

25 Q. Was it right before August 9th, was it --

1 A. It was -- I wouldn't say it was right before
2 August 9th, but it was fairly close. Maybe it was a
3 month or two before.

4 Q. A month or two. And that was the first time
5 you had training on --

6 A. No, not the first time. That was the last
7 time we had training.

8 Q. The last time you had training on it, okay.
9 And could you explain to me what -- the training?

10 A. They go over formations. They go over who the
11 team leaders are, who the supervisors are, what
12 they're gonna be shouting, what are the commands
13 they're gonna be giving in order to do certain things,
14 how you move, what to say, things like that.

15 Q. Okay. And do you feel that -- let me ask you,
16 in the events that occurred after Mike Brown's
17 killing, how do you -- do you feel that that training
18 helped you?

19 MR. HUGHES: Before you answer, I object to
20 the form of the question. It's argumentative -- after
21 Mike Brown's killing.

22 MR. PLUNKERT: Join.

23 MR. SHABAZZ: I'll rephrase that.

24 Q. (MR. SHABAZZ CONTINUING) How helpful was that
25 training to you in the incidents that occurred after

1 what kind of equipment did you have on?

2 A. I had a black raid vest that has "police"
3 written on the front and the back. I had blue jeans
4 on, a T-shirt, and my duty holster and belt.

5 Q. Okay. No gas mask?

6 A. No.

7 Q. No type of -- no helmet?

8 A. No.

9 Q. Not on that day?

10 A. Not on that day.

11 Q. But on other days did you?

12 A. Yes, sir.

13 Q. Okay. But on your first day, it was just like
14 regular police gear?

15 MR. HUGHES: Just object to the form of the
16 question. It's vague as to what you mean by that.

17 Q. (MR. SHABAZZ CONTINUING) Were you wearing
18 just regular police gear on that day?

19 MR. HUGHES: Same objection.

20 THE WITNESS: It's not regular police gear.
21 It's not what the patrolmen were wearing. We were
22 wearing blue jeans and T-shirts. So it's our regular
23 police gear for our unit; however, it's not regular
24 for the department.

25 Q. (MR. SHABAZZ CONTINUING) So you were wearing

1 we're talking here about the arrests of Kerry White,
2 Sandy Bowers and Kia Bowers.

3 A. Okay.

4 Q. Okay? Have you spoken to Officer Valentine
5 and Hill about their arrests?

6 A. No.

7 Q. Okay. Now, I'm going to take you to this day
8 we're talking about now which is August the 13th --
9 August the 13th, Wednesday. Do you remember that day?

10 A. Yes.

11 Q. That's the Wednesday after the killing.

12 MR. HUGHES: Same objection. It's
13 argumentative.

14 Q. (MR. SHABAZZ CONTINUING) What time did you
15 report to duty on that day, August 13th?

16 A. I want to say it was around four o'clock in
17 the afternoon. Either four or six.

18 Q. Where did you report to on that day?

19 A. Buzz Westfall.

20 Q. Where was that?

21 A. The parking lot of the Schnuck's at Buzz
22 Westfall and -- or Lucas and Hunt in West Florissant.

23 Q. What was happening there?

24 A. That was the command post where everybody
25 checked in.

1 an individual speaking through a loud speaker, was it
2 coming from a -- or was it coming from a vehicle?

3 A. It was coming from an individual inside a
4 vehicle.

5 Q. Individual inside of a vehicle. One of the
6 tactical military style vehicles?

7 A. I believe it was coming from one of our
8 tactical units, yes, sir.

9 Q. Okay. And at some point, the order was given
10 for the crowd to disperse?

11 A. Yes, sir.

12 Q. What happened from there?

13 A. The order was given several times. Once the
14 order was given several times and the crowd was not
15 dispersing and they continued to throw rocks and
16 bottles at us, then the decision was made for our tact
17 operations unit to begin using smoke and tear gas to
18 disperse the crowd.

19 Q. Okay. And what was your role?

20 A. We were just on the scrimmage line supporting
21 the tactical operations unit and to effect arrest of
22 anybody that tried to charge the scrimmage line or...

23 Q. Okay. So what happened from there?

24 A. From there, the crowd was dispersed and we --
25 our scrimmage line went eastbound on Chambers and we

1 officers who you all were with in unity, some members
2 of the unit that you were with were continuously using
3 these devices to disperse that crowd, right?

4 MR. HUGHES: Object to the form.

5 THE WITNESS: If -- now, let me -- so I'm
6 assuming you mean we were just walking and launching
7 gas. Is that what you're assuming happened?

8 Q. (MR. SHABAZZ CONTINUING) Yes, sir.

9 A. That's not the case. As we're moving up west
10 -- or Chambers, eastbound Chambers from West
11 Florissant, if there was a crowd that was dispersed
12 initially, if they reformed and began throwing rocks
13 and bottles at us again, then our tactical operations
14 unit would deploy whatever means they felt necessary
15 to disperse that crowd.

16 Q. Now, how could they reform when you all never
17 stopped?

18 A. Well, we were moving slower than they were, so
19 they were able to get distance and then stop and
20 reform.

21 Q. Now, this is a pretty -- this is a pretty
22 rebellious crowd, wouldn't you say?

23 MR. HUGHES: Just object to form of the
24 question. I'm not sure what you mean by that.

25 Q. (MR. SHABAZZ CONTINUING) Would you

1 question. It's vague.

2 Q. (MR. SHABAZZ CONTINUING) You may answer.

3 MR. HUGHES: No foundation as to what your
4 -- time or place.

5 THE WITNESS: The majority of the time,
6 yes, they, I would say, listen to my commands. They
7 listen to my advice maybe would be a proper term.

8 Q. (MR. SHABAZZ CONTINUING) In your time as a
9 police officer, you have not encountered persons
10 cursing at you and throwing objects at you?

11 A. Oh, I have.

12 Q. But not in groups?

13 A. Not of this magnitude, no, sir.

14 Q. Not of this magnitude?

15 A. No, sir.

16 Q. Okay. So once again, this had -- you had no
17 feelings about that whatsoever as you walked up
18 Chambers?

19 A. The only thing I was probably worried about
20 was being shot at that point.

21 Q. That worried you?

22 A. Yes, sir.

23 Q. Okay. Were you angry?

24 A. No.

25 Q. I'll take you now to the corner of -- okay,

1 A. Yes.

2 Q. Okay. And you say that -- and how many,
3 again, people did you say were on Lorna, roughly?

4 A. 20, 25.

5 Q. And they were doing what?

6 A. Throwing rocks and bottles and yelling.

7 Q. So that means they had -- they were not
8 running away, were they?

9 A. Well, as I said before, they would move
10 further away and then they would stop and then begin
11 to protest again and throw rocks and bottles, and then
12 as we got closer, they would move away some more,
13 they'd stop and do the same thing.

14 Q. Okay. So how did you come in contact --
15 strike that.

16 So at some point in time, you came into
17 contact with Kerry White.

18 A. Yes, sir.

19 Q. Tell us about that.

20 A. We were moving our way down Lorna and we heard
21 over the radio that there was a white vehicle
22 approaching our scrimmage line or our line with the
23 headlights out, and Officer McCann observed it --
24 observed the vehicle coming up on Lorna. It pulled
25 over, and then McCann -- we were advising them stop

1 Q. Did you think it was a gun?

2 A. I wasn't sure what it was.

3 Q. So you drew your weapon for what reason?

4 A. Because the vehicle was moving and I was
5 afraid I was going to be hit by a car.

6 Q. What rate of speed was the vehicle moving?

7 A. I don't -- maybe five to ten miles an hour.

8 Q. Okay. Now, what happened after that?

9 A. They were taken into custody, and then I
10 walked them back to -- myself and a couple other
11 officers walked them back to the -- to Chambers and
12 Lorna where there was a conveyance van waiting.

13 Q. Let's back up for a minute.

14 A. Sure.

15 Q. What happened when you first approached the
16 vehicle?

17 A. As I said, Mr. White had his hands outside the
18 car, and Mr. -- the two Bowers brothers had their
19 hands in the air. We told them that they were under
20 arrest and to get out of the vehicle, at which time
21 they exited the vehicle and they were taken into
22 custody.

23 Q. Okay. Which one of them did you apprehend?

24 A. I assisted in the apprehension of Mr. White.

25 Q. Mr. White. Were any of them placed on the

1 our coming in contact with him, but there was no
2 damage done to the camera when we got there.

3 Q. And none of these officers here, including
4 you, have put your hands on Mr. White?

5 A. I did put my hands on Mr. White.

6 Q. At what point?

7 A. To place him into custody.

8 Q. Once he was on the ground?

9 A. Yes, sir.

10 Q. No one threw Kerry White onto the ground?

11 A. No, sir.

12 Q. Okay. And did any of the other officers that
13 were with you, did you -- did you see them throw any
14 of the other suspects to the ground --

15 A. No, sir.

16 Q. -- that were in the vehicle?

17 A. No, sir.

18 Q. No man was thrown to the ground?

19 A. No, sir.

20 Q. Okay. Give me one moment, please. Now, the
21 other people that were on the block of Lorna, what
22 happened to them as you all moved then down Lorna?

23 A. They began dispersing into yards and through
24 back -- through people's yards.

25 Q. Okay. And were they pursued?

1 Lorna, the helicopter light was shining down on Lorna;
2 is that fair to say?

3 A. Yes.

4 Q. And a vehicle that you could see was coming
5 towards you?

6 A. Yes, sir.

7 Q. Then you heard this on the radio?

8 A. Heard it on the radio while we were making the
9 turn on Lorna or shortly thereafter.

10 Q. All right. And about how long did it take for
11 -- well, how far down the block was the vehicle
12 coming? How far down the block?

13 A. I don't know where it started from.

14 Q. When you first saw it -- when you first saw
15 the vehicle moving towards you, how far away was it?

16 A. Maybe 100 yards or so. Maybe 100, 200 yards.

17 Q. Maybe 200 yards. And what happened then?
18 Those 200 yards, it's coming towards you, what
19 happened then?

20 A. We were yelling for the vehicle to stop. Our
21 tact operations unit was, over the loud speaker,
22 yelling to stop, stop the vehicle.

23 Q. You considered it to be a threat?

24 A. I did; yes, sir.

25 Q. At what point did you consider it to be a

1 threat? The entire time?

2 A. As long as the vehicle is moving, I would
3 consider it a threat.

4 Q. That vehicle can, in fact, be a deadly threat
5 to you, can't it?

6 A. Yes, sir.

7 Q. And it was a deadly threat to you, according
8 to what you're saying?

9 A. It could be used as a deadly weapon; yes, sir.

10 Q. Okay. But you chose to use restraint in that
11 instance; is that what you're saying? You chose not
12 to open fire?

13 A. Correct.

14 Q. Because?

15 A. Because the vehicle pulled over.

16 Q. I mean but as it was coming to you, you didn't
17 know it would stop.

18 A. I did not.

19 Q. And you said it got within one car length of
20 you.

21 A. I don't remember saying that.

22 Q. Well, how far did it get to you before it
23 pulled over?

24 A. Maybe ten, twelve yards, somewhere around
25 there.

1 Q. Okay. And who was telling the vehicle to
2 stop?

3 A. Everybody.

4 Q. Verbally just out of their mouths or was it
5 the amplified sound?

6 A. Amplified and verbally.

7 Q. Okay.

8 A. Flashlights were used to, you know, let them
9 know we were there if they didn't see us.

10 Q. All right. Just a couple more questions here.
11 At some point in time, were you aware that the command
12 in control of St. Louis County Police was -- strike
13 that.

14 Are you aware at some point in time that
15 commanding control of St. Louis County Police was
16 given over to the state highway patrol?

17 A. Yes.

18 Q. What date was that?

19 A. I don't remember the exact date.

20 Q. Was it -- was it like -- was it before or
21 after this incident?

22 A. I don't recall. I want to say it was after.
23 I'm not sure.

24 Q. And were you given new instructions on
25 dispersing crowds once the highway patrol took over?

1 Q. Which consists of?

2 A. A khaki shirt, brown pants.

3 Q. Okay. But there were other officers there
4 that were dressed differently, is that right?

5 A. Our tactical operations unit.

6 Q. Okay. What were their uniforms?

7 A. They were in green pants, green shirt, green
8 vests, helmets, gas masks.

9 Q. Now, Kerry White, he got out the vehicle
10 voluntarily, is that right?

11 A. Yes, sir.

12 Q. You told him to exit the vehicle. He got out
13 and laid on the ground?

14 A. Yes, sir.

15 Q. And then you went and picked his -- when he
16 got out on the ground again, then you went to him and
17 did what?

18 A. We -- I assisted him in getting him into the
19 flex cuffs and get him in custody.

20 Q. You just went and just pretty much put him in
21 cuffs. When he laid on the ground, did he lay on his
22 stomach? Did he lay on his -- how did he --

23 A. On his stomach.

24 Q. He was told to do that or he just did it?

25 A. He just did that.